IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20455 of 2004

Between:

Smt. Chand Beebi W/o Md. Ismail
R/o Srinivasa Nagar, Opp. to Prathibha Hostel, Kasibugga, Near side of the Petrol Bunk, Palasa Mandal, Srikakulam

..... PETITIONER

AND

1 The Assistant Commissioner of Labour Srikakulam.
2 The Government of A.P., Labour Employement & Training and Factories Dept rep by Principal secretary, Secretariat, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction on the part of the respondents in not referring my dispute to the Industrial Tribunal cum Labour Court, Visakhapatnam Under Sec. 10 (1) of the I.D. Act In spite of my repeated representations and 1st respondent giving his inconsistent advise by his letters dated 4-3-2004 and 28-11-2003 as illegal, arbitrary capricious, unjust and unwarranted and consequently to direct the respondents to refer my case to the industrial tribunal cum Labour Court, Visakhapantam under Sec. 10(1) of the I.D. Act, 1947 within the time stipulated by this Hon'ble Court.

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondents: GP FOR LABOUR

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 20455 of 2004

O R D E R:

The petitioner filed this writ petition seeking to declare the inaction on the part of the respondents in not referring the dispute to the Industrial Tribunal-cum-Labour Court, Visakhapatnam under Section 10(1) of the Industrial Disputes Act in spite of the representations as illegal and arbitrary.

The petitioner was appointed as Part Time Contingent Sweeper on 1.4.1992 in the office of the Project Director, District Women & Child Development Agency, Srikakulam on the wages of Rs.50/- per month. After completion of three years, the wages were enhanced to Rs.250/-, thereafter to Rs.300/- and subsequently to Rs.655/- per month. She requested for regularization of her services in accordance with G.O.Ms.No. 212 dated 22.4.1994 and for absorption. Her case was not considered by the Project Director vide his order dated 16.11.2003. Therefore, she made a representation to the 1st respondent on 12.11.2003 requesting to refer the matter to the Industrial Tribunal, for which the 1st respondent vide his letter dated 28.11.2003 advised her to file a case directly under the I.D. Act before the Labour Court. Another representation dated 7.1.2004 was also made to the 1st respondent for which the 1st respondent advised her to approach the Tribunal as it is a service matter. Then she got issued legal notice to the respondents to refer her case by the respondents to the Industrial Tribunal but there was no response. Hence the present writ petition.

Learned counsel for the petitioner contended that the

case of the petitioner should have been referred to the Tribunal for adjudication and that the Women & Child Welfare Department is an Industry within the meaning of I.D. Act and hence she prays to direct the 2nd respondent to refer the matter to the Tribunal.

On the other hand, learned counsel for the respondents contended that there is no provision that the Women and Child Welfare Department comes within the meaning of 'Industry' and the petitioner is a Part-Time Contingent Sweeper. Even if the services of the petitioner have to be regularized in terms of G.O.Ms.No.212 dated 22.4.1994, the same has to be considered by the Tribunal constituted under the A.P. Administrative Tribunals Act and hence the writ petition is devoid of merit.

As per the proceedings of the 1st respondent dated 4.3.2004, the petitioner was not entitled to be absorbed in accordance with G.O.Ms.No.212 and therefore she was advised to approach the Tribunal as it is a service matter. On another occasion, the 1st respondent vide proceedings dated 28.11.2003 informed the petitioner that the Management was asked to file remarks on her representation but no remarks were received so far and hence she was advised to file a case directly before the Labour Court. The Director, Women Development & Child Welfare vide proceedings dated 16.11.2003 informed the petitioner that she is not eligible for absorption/regularization in accordance with G.O.Ms.No.212 Finance & Planning (FW FC –II) dated 22.4.1994.

As per G.O.Ms.No. 212 dated 22.4.1994, the services of the consolidated pay/daily wage workers who worked continuously for a minimum period of 5 years and are continuing on 25.11.1993 be regularized by the appointing authorities subject to the following conditions:

1. The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which

his/her services have to be regularized.

2. They should be within age limits as on the date of appointment as NMR/daily wage employee.

3. Absorption shall be against clear vacancies of posts considered necessary to be continued as per work load excluding the vacancies already notified to the APPSC/DSC.

The petitioner was not eligible for absorption/regularization because she does not possess the prescribed qualification i.e. 7th class, there was no age proof certificate but the age certificate issued by the Civil Surgeon dated 19.1.1996 would go to show that she was aged 36 years, there were no clear vacancies and she has not completed 5 years of continuous service as Part Time Contingent Sweeper as on 25.11.1993.

The word 'Industry' is defined under Section 2(j) of the Industrial Disputes Act, 1947, which reads as follows:

> " '*industry'* means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment handicraft, or industrial occupation or avocation of workmen".

A plain reading of the above provision makes it clear that any systematic activity carried on by co-operation between an employer and his workmen for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes whether or not (a) any capital has been invested for the purpose of carrying on such activity; or (ii) such activity is carried on with a motive to make any gain or profit, comes within the meaning of this

definition.

Learned counsel for the petitioner relied upon a decision in **D.C.K. Sangh v. Union of India & Others** wherein it is held that the Central Government instead of referring the dispute for adjudication to the appropriate Industrial Court under Section 10 of the I.D. Act, 1947, it itself decided the dispute which is not permissible under the law. But, as a matter of fact, in the present case the petitioner has not approached the State Government under Section 10 of the I.D. Act. Therefore, the above decision has no application.

The learned counsel for the petitioner relied upon another decision in **Bangalore Water Supply and Sewerage Board v. Rajappa** wherein the apex court laid down triple test for determining whether a particular establishment is "industry" or not. The triple test is "where (a) systematic activity; (b) organized by co-operation between employer and employee (the direct and substantial element is commercial); (c) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not merely spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale of (prasad or food) *prima facie*, there is an industry in that enterprise".

There is absolutely no factual basis to show that the Organization in which the petitioner worked is a commercial one or established for production or distribution of goods. Therefore, in the absence of any specific pleadings or factual foundations it cannot be said that the Women & Child Development Agency comes under the definition 'industry'. This observation is made because of lack of pleadings as to whether the petitioner is entitled to be regularized as she is appointed on consolidated pay or wages have to be determined with reference to G.O.Ms.No. 212 dated 22.4.1994 issued by the Government of Andhra Pradesh. Therefore, as rightly contended by the learned Government Pleader, the remedy if any for the petitioner is to approach the Administrative Tribunal in case the

respondents have violated any of the terms of G.O.Ms.No.212 dated 22.4.1994.

Therefore, the writ petition is devoid of merit and it is accordingly dismissed.

_____

K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Assistant Commissioner of Labour Srikakulam.
2 The Principal secretary, Government of A.P., Labour Employement & Training and Factories Department, Secretariat, Hyderabad

3. The Government Pleader for Labour, High Court Buildings, Hyderabad (OUT).

4. 2 CD copies.